

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Rulemaking to Amend Part 1 and Part 21 of the) CC Docket No. 92-297
Commission's Rules to Redesignate the 27.5 - 29.5)
GHz Frequency Band, to Reallocate the 29.5 - 30)
GHz Band, and to Establish Rules and Policies for)
Local Multipoint Distribution Service and for Fixed) DOCKET FILE COPY ORIGINAL
Satellite Services;)
)
and)
)
Suite 12 Group Petition for Pioneer's Preference) PP-22

**COMMENTS IN RESPONSE TO
THIRD NOTICE OF PROPOSED RULEMAKING**

The Wireless Cable Association International, Inc. ("WCAI"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, hereby submits its initial comments in response to the *Third Notice of Proposed Rulemaking and Supplemental Tentative Decision* (the "TNPRM") in the captioned proceeding.^{1/}

As the trade association of the wireless cable industry, WCAI has had a long-standing interest in the 28 GHz band in general, and in this proceeding in particular.^{2/} Although the

^{1/}*Rulemaking to Amend Part 1 and Part 21 of the Commission's Rules to Redesignate the 27.5 - 29.5 GHz Frequency Band, to Reallocate the 29.5 -30.0 GHz Band, and to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, FCC 95-230 (rel. July 28, 1995)[hereinafter cited as "TNPRM"]*.

^{2/}*See, e.g. Comments and Request to Participate of Wireless Cable Ass'n Int'l, CC Docket No. 92-297 (filed March 18, 1994); Reply Comments of Wireless Cable Ass'n Int'l, CC Docket No. 92-297 (filed April 15, 1993); Comments of Wireless Cable Ass'n Int'l, CC*
(continued...)

vast majority of the wireless cable systems operating today employ the Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") channels in the 2.1 GHz and 2.5 GHz bands, wireless operators have constructed systems utilizing channels in the 18 GHz band, and have explored the viability of the 28 GHz band and a variety of other bands for use in connection with their operations.

Wireless cable operators today are facing tremendous challenges in the marketplace as a direct result of the limited amount of spectrum available to them. With a maximum of 33 channels (20 of which must be substantially devoted to, or reserved for, educational programming), a wireless cable system almost always lags behind its competition in terms of channel capacity. Of great concern to WCAI is the fact that the channel capacity gap is widening. It was not too long ago that the average franchised cable system had just 32 channels^{3/} and DBS was still on the drawing boards. Today, however, wireless cable operators must face such behemoths as the Time Warner 150 channel system in Queens, New York, as well as similarly sized DBS offerings. While there has not been sufficient head-to-head competition between wireless cable and the new generation of 100+ channel systems to

^{2/}(...continued)

Docket No. 92-297 (filed Mar. 16, 1993); Comments of Wireless Cable Ass'n Int'l, RM 7872 (filed Jan. 15, 1992); Opposition of Wireless Cable Ass'n Int'l, PP-22 (filed Jan. 15, 1992); Letter of Paul J. Sinderbrand, Esq. to Donna R. Searcy, File No. 10380-CF-P-88 (dated June 14, 1989); Letter of Paul J. Sinderbrand, Esq. to Donna R. Searcy, File No. 10380-CF-P-88 (dated July 6, 1989); Letter of Paul J. Sinderbrand, Esq. to Hon. Alfred C. Sikes, File No. 10380-CF-P-88 (dated Nov. 1, 1989).

^{3/}National Telecommunications and Information Administration, NTIA Telecom 2000: Charting the Course for a New Century, at 152 (Oct 1988).

draw definitive conclusions. common sense suggests that the wireless operator will be at a severe competitive disadvantage due to its limited channel capacity. While WCAI is aggressively pursuing digital compression as a vehicle for offering consumers additional programming options,^{4/} the cable industry is making an equally aggressive push, and DBS has already incorporated digital compression technology. As a result, the Commission cannot count on compression to close the channel gap.

Compounding the problem is what the Commission has called "the increasing convergence of previously separate markets embracing voice, data, graphics and video."^{5/} As coaxial cable system operators and telephone companies move steadily towards the provision of integrated video, voice and data services to the public, the wireless cable industry will have to keep pace with public demand for integrated broadband offerings. And, it will have to do so in an era of spectrum scarcity. Many wireless cable operators do not currently have access to the spectrum they need to add two-way services. Because the Local Multipoint Distribution Service ("LMDS") may provide the wireless cable operator with additional spectrum for the offering of the ancillary video, data and voice services it needs to add to remain competitive, WCAI's members have a vital interest in the rules and policies that will govern the LMDS.

^{4/}See, e.g. Request for Declaratory Ruling, DA 95-1854 (filed July 13, 1995).

^{5/}*Telephone Company-Cable Television Cross Ownership Rules, Section 63.54-63.58, 7 FCC Rcd 300, 305-306 (1991).*

The Commission has correctly recognized that the wireless cable industry “may find the two-way capacity of LMDS services appropriate for the provision of local telephone services in competition with LECs.”^{6/} Thus, WCAI agrees with the *TNPRM* that MDS licensees should not be barred from securing LMDS authorizations. Given that the wireless cable industry enjoys only a modest portion of the multichannel video distribution marketplace^{7/} and has yet to enter into the two-way voice and data marketplaces, the benefits of permitting MDS licensees to secure LMDS authorizations to augment wireless cable service offerings far outweigh any concerns regarding undue concentration. Simply put, while the public demand for LMDS to be used as yet another provider of multichannel cable programming is speculative, allowing MDS licensees access to the 28 GHz band will permit wireless cable to meet the growing demand for broadband service offerings. The Commission has proposed, and WCAI supports, measures designed to prevent spectrum warehousing by LMDS licensees.^{8/} Those measures, coupled with the very fact that the spectrum will be auctioned, should assure that no entity warehouses LMDS authorizations.

The desire of wireless cable operators to perhaps incorporate LMDS into their service offerings will be enhanced by establishing LMDS service areas that are co-terminus with the service areas afforded MDS licensees. The Commission has recently determined that it will

^{6/}*TNPRM*, at ¶ 107.

^{7/}Just last week, Paul Kagan Associates, Inc. released a prediction that wireless cable will secure less than 4.9% of the multichannel video marketplace by 1997 and less than 5.4% of the market by 2004.

^{8/}*See id.*, at ¶¶ 113-117.

award future MDS licenses based on Rand McNally Basic Trading Areas (“BTAs”).^{9/} Use of any area other than BTAs for the licensing of LMDS will force wireless cable operators to bid for LMDS rights in areas where they cannot use LMDS to provide services complementary to wireless cable. Thus, WCAI supports the proposal advanced in the *TNPRM* to use BTAs as the geographic area for LMDS licensing.^{10/}

Finally, WCAI supports the Commission’s proposal to award three LMDS licenses per BTA, two for 425 MHz each and one for 150 MHz.^{11/} WCAI recognizes that there may be potential users of LMDS spectrum that desire 1000 MHz, and agrees with the *TNPRM* that no limit should be placed on amount of spectrum that an entity can aggregate in one BTA.^{12/} On the other hand, as the *TNPRM* reflects, there are potential applications for LMDS that require less spectrum.^{13/} Awarding multiple licensees per market would, for example, enable a wireless cable system operator to meet a need for wireless telephony, while still leaving spectrum for another multichannel video and/or wireless telephony provider.

The Commission has recognized that “flexible service rules will . . . promote the efficient use of scarce spectrum by allowing providers to adjust and respond to changes in

^{9/}*See Amendment of Parts 21 and 74 of the Commission’s Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service*, FCC 95-230, MM Docket No. 94-131, at ¶¶ 34-37 (rel. June 30, 1995).

^{10/}*See TNPRM*, at ¶¶ 82-87.

^{11/}*See id.*, at ¶ 79.

^{12/}*See id.*, at ¶ 81.

^{13/}*See id.* at ¶¶ 76-78.

technology and market demand.”^{14/} By the same token, offering LMDS applicants the option of securing less than 1000 MHz of spectrum will promote spectrum efficiency by allowing service providers to secure bandwidth closely tailored to their chosen technology and market demand. Because LMDS has been established as a flexible service, different licensees will need different amounts of spectrum. For example, the *TNPRM* notes that in one configuration the full band can support 16,000 telephone subscribers and 200 video on demand channels for every cell of 3 miles radius.^{15/} That is far more capacity than many prospective LMDS licensees need. If the Commission decides to award only a single, 1000 MHz authorization in each BTA, it could effectively preclude certain services -- services that are only economically viable if the provider can bid upon and acquire authorizations for less bandwidth.

Fortunately, because the Commission will be employing auctions to award LMDS authorizations, the Commission can avoid unnecessarily precluding valuable services that require limited bandwidth. WCAI supports the Commission’s proposal to use simultaneous, multi-round auctions to award LMDS authorizations, with one caveat. The Commission should restructure its bid withdrawal provisions so that an applicant needing more than one channel in a BTA can withdraw a high bid for one channel without penalty if it ceases bidding on other channels in the same market. To take advantage of this right to withdraw

^{14/}*Id.* at ¶ 2.

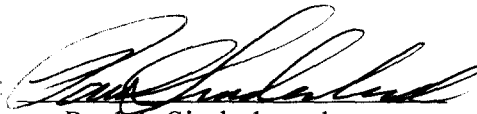
^{15/}*See id.* at ¶78.

a high bid after conclusion of a round, the bidder must have been an active bidder^{16/} in the prior round on more than one license for the BTA, and must have been the high bidder on at least one license at the close of that prior round. When these circumstances are met, the bidder should be permitted to withdraw its high bid before the start of the next round, but in doing so should forfeit its right to bid in subsequent rounds for any license in that particular BTA. In this way, a bidder needing more than one channel for its planned service will not be harmed if it cannot acquire all of the needed bandwidth at an acceptable price.

WHEREFORE, for the foregoing reasons, WCAI urges the Commission to adopt the proposals advanced in the *TNPRM*, subject to the qualifications set forth above.

Respectfully submitted,

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^{16/}In other words, even if the bidder was not the high bidder for that license, it must have made a bid during the round that exceeded the minimum acceptable bid for the round.